

Board of Alien Labor Certification Appeals

UNITED STATES DEPARTMENT OF LABOR
WASHINGTON, D.C.

'Notice: This is an electronic bench opinion which has not been verified as official'

DATE: March 13, 1997

CASE NO: 95-INA-506

In the Matter of:

LICHTENSTEIN ENGINEERING ASSOCIATES, PC
Employer,

On Behalf of:

FARZAD FOULADI,
Alien

Appearance: D. P. Goldstein, Esq.
New York City, New York
for the Employer and the Alien

Before: Huddleston, Holmes, and Neusner
Administrative Law Judges

FREDERICK D. NEUSNER
Administrative Law Judge

DECISION AND ORDER

This case arose from an application for labor certification on behalf of Farzad Fouladi (Alien) filed by Lichtenstein Engineering Associates, P. C., (Employer), pursuant to § 212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1182(a)(5)(A) (the Act), and the regulations promulgated thereunder, 20 CFR Part 656. The Certifying Officer (CO) of the U.S. Department of Labor at New York, denied the application, and the Employer and the Alien requested review pursuant to 20 CFR § 656.26.¹

Statutory authority. Under § 212(a)(5) of the Act, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor may receive a visa if the Secretary of

¹The following decision is based on the record upon which the CO denied certification and the Employer's request for review, as contained in an Appeal File (AF), and any written argument of the parties. 20 CFR § 656.27(c).

Labor has determined and certified to the Secretary of State and to the Attorney General that (1) there are not sufficient workers who are able, willing, qualified, and available at the time of the application and at the place where the alien is to perform such labor; and (2) the employment of the alien will not adversely affect the wages and working conditions of the U.S. workers similarly employed.²

Employers desiring to employ an alien on a permanent basis must demonstrate that the requirements of 20 CFR, Part 656 have been met. These requirements include the responsibility of the Employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other reasonable means in order to make a good faith test of U.S. worker availability.

Statement of the case. On February 16, 1993, the Employer filed an application for labor certification to enable the Alien, an Iranian national, to fill the position of Mechanical Engineer for the Employer, whose business it described as an Engineering company in New York City, New York. AF 10-13. The duties of the position offered were described by the Employer as follows in the Form ETA 750 filed as part of its application:

Designs & rating of movable bridges with mechanical systems. [Knowledge] in design & rating of open gear set, reducers & pinion. Structural work involves computing dead load & live load plus impact to design the size, shape, strength & type of structural members. Use of AUTOCAD system in order to input, analyze & draft complex structural systems. Strong background in dynamic & vibration theory to be able to analyze dynamic loading (wind load, earthquake, etc) on structures. Engages in field inspection of all types of structures. Work period may vary & could require inspection work at off-peak hours, i.e. weekends & evenings.

The other special requirements the Employer stated were, "Knowledge in dynamics and vibration theory and use of AutoCAD systems (version 10 & 11)." The worker's immediate supervisor in this job will be the Project Manager. The basic rate of pay for a forty hour week is \$ 31,731 per year. The minimum requirements are college graduation with a master's degree in Mechanical Engineering or Civil Engineering with concentration in Structural Engineering. No requirement beyond the academic degrees by way

²Administrative notice is taken of the Dictionary of Occupational Titles, published by the Employment and Training Administration of the U. S. Department of Labor.

of either training or experience was stated in the Employer's application. AF 13, 22, 32.³

Following the nomenclature used by the Employer, the CO assigned this job the title listed for Mechanical Engineer.⁴ As an alternative to Mechanical Engineering as a major field of study, the education requirement allowed Civil Engineering with a "concentration in Structural Engineering." AF 32.⁵ After comparing the Employer's job description with both of the job classifications in the DOT, it is clear that the Employer's

³At some point the version at AF 25 and 32, which contains these special requirements, was substituted for the version at AF 13.

⁴Under DOT classification No. 007-061-014, the duties of a Mechanical Engineer are as follows: **MECHANICAL ENGINEER** (profess. & kin.) Researches, plans, and designs mechanical and electromechanical products and systems, and directs and coordinates activities involved in fabrication, operation, application, installation, and repair of mechanical or electromechanical products and systems. Researches and analyzes data, such as customer design proposal, specifications, and manuals to determine feasibility of design or application. Designs products or system, such as instruments, controls, robots, engines, machines, and mechanical thermal, hydraulic, or heat transfer systems, applying knowledge of engineering principles [DESIGN ENGINEER, PRODUCTS (profess. & kin.) Master Title]. Plans and directs engineering personnel in fabrication of test control apparatus and equipment, and development of methods and procedures for testing products or systems [TEST ENGINEER (profess. & kin.) Master Title]. Directs and coordinates fabrication and installation activities to ensure products and systems conform to engineering design and customer specifications. Coordinates operation, maintenance, and repair activities to obtain optimum utilization of machines and equipment. May design products and systems to interface machines, hardware, and software. May evaluate field installations and recommend design modifications to eliminate machine or system malfunctions. May specialize in specific field of mechanical engineering, such as heat transfer, hydraulics, electromechanics, controls and instrumentation, robotics, nuclear systems, tooling, air-conditioning and refrigeration; or in type of product, such as propulsion systems or machinery and mechanical equipment; or in type of work, such as steam or gas generation and distribution, steam plant engineering, or system planning.

⁵Under the entry in DOT classification No. 005-061-014, the duties of a Civil Engineer are as follows: **CIVIL ENGINEER**. (profess. & kin.) Designs and directs construction of civil engineering projects, such as roads, railroads, airports, bridges, harbors, channels, dams, irrigation systems, pipelines, and powerplants: Analyzes reports, maps, drawings, blueprints, tests, and aerial photographs on soil composition, terrain, hydrological characteristics, and other topographical and geologic data to plan and design project. Calculates costs and determines feasibility of project based on analysis of collected data, applying knowledge and techniques of engineering and advanced mathematics. Prepares or directs preparation and modification of reports, specifications, plans, construction schedules, environmental impact studies, and designs for project. Inspects construction site to monitor progress and ensure conformance to engineering plans, specifications, and construction and safety standards. May direct construction and maintenance activities at project site. May use computer assisted engineering and design software and equipment to prepare engineering and design documents. May be designated according to specialty or product.

description of the duties of a Mechanical Engineer in its firm was not the same as the work performed under this title or under the title of Civil Engineer, as set forth in the DOT. Moreover, the DOT does not recognize a subclassification as a "bridge engineer" or "bridge designer" or any comparable position that fits the description of the work set out in the Employer's application or its posting or its newspaper advertisement.⁶

Qualifications of the Alien. The Alien, whose baccalaureate degree are in the Arts with a major in Physics, and in Science with a major in Mechanical Engineering, has a master's degree in Science, with a major in Mechanical Engineering. He worked for the Employer as a Mechanical Engineer in the position at issue from April 1992 until this application was filed in February of 1993. AF 10-11.⁷

Recruitment report. After the position was posted and advertised, twenty-four U. S. applicants for the job responded, and their resumes were forwarded to the Employer. Employer sent follow up letters to four applicants; and the Employer concluded that eight applicants did not qualify. AF 102-105. Their resumes indicated that at least eight U. S. candidates were possibly qualified, however. Consequently, the State employment service reported to the CO that U. S. workers appeared to be available in the existing labor market on November 29, 1993. AF 114.

Notice of finding. In the NOF of November 7, 1994, the CO advised the Employer that certification would be denied on the record as it stood, subject to rebuttal on or before December 12, 1994. All of the U. S. workers whom the CO considered to be possibly qualified for the job were rejected by the Employer on grounds that (1) they had no knowledge of gears, pinions and reducer sets; (2) they had no knowledge of structural design; (3) they had no knowledge or educational background in mechanical systems; (4) they had no knowledge of bridge mechanical systems; (5) they had no knowledge of AutoCAD systems; and (6) their "experience at managerial levels [is] irrelevant to the requirements of the advertised position."

In the NOF the CO first compared the Employer's description of the position to be filled and the Employer's reasons for rejecting Chuen Wai Yau and Albert Galperin. Noting that both Mr. Yau and Mr. Galperin have master's degrees in Mechanical Engineering, and that Mr. Galperin also had basic knowledge of AutoCAD, the CO said the Employer's rejection of both of these U.

⁶Both a Mechanical Engineer and a Civil Engineer require eight years of specific vocational preparation and the same level of general educational development, according to the DOT.

⁷His job duties with Employer are identical to the Employer's description of the job opportunity at issue.

S. workers was not based on lawful, job related reasons because during the job interviews of each of these candidates Employer added specifications that exceeded and were more restrictive than the detailed criteria set out in its recruiting advertisement.⁸

It would appear that the employer has added requirements when confronted with qualified U. S. workers and [which requirements], we note, the alien lacked at the time of hire.

AF 117-118. After considering the Employer's recruitment report, the CO questioned Employer's rejection of the following U. S. applicants without interviews: Senaka P. Aturaliya, Cornel C. K. Chen, Liping Cai, Mihaela Cismigiu, Zoltan Ferenczy, Dr. Matthew W. P. Griffiths, Yoel Gutman, Tank Huanbin, Igor Marinovic, Mohammad Mirza Mihdi, Khalid Nasim, Edward G. Porter, and Ted Zhaomin Xu.

Several of the resumes of these U. S. candidates did list specific experience with bridges and AutoCAD and, as all of their resumes listed a Master's Degree in either Mechanical or Civil Engineering, the CO said it was unclear how the Employer could have determined that there are not sufficient U.S. workers who are able, willing, qualified and available to perform the work of the position offered without benefit of contact or an interview. Observing that where a resume has indicated a broad range of experience, education, and/or training, a reasonable possibility is raised that the job candidate is qualified, the CO said that the Employer bears the burden of further investigating those credentials, even where the resume does not expressly state that the applicant meets each and every job requirement, such as knowledge of the software that the Employer specified in its application. As a result of this Employer's failure to interview these U. S. workers, in the absence of evidence to the contrary the Employer failed to sustain its burden of proof that there are not sufficient U. S. workers who are "able, willing, qualified and available" to perform the job at issue.

Having concluded that a reasonable possibility existed that the named candidates were qualified on the basis of the resumes, and that the Employer's evidence did not persuasively contradict this inference, the CO directed that on rebuttal the Employer must document lawful job related reasons for rejecting these applicants and, where applicants were rejected based solely on

⁸This was well expressed by Mr. Yau's report on the interview, in which he said, "It soon became clear that, as the interview progressed, they were seeking someone with more specific knowledge of bridges design, which could only be gained through experience working in the field. Very few universities offer a concentration in bridge design, since that would limit career opportunity. What they do offer is a general background in the field of structures and mechanics with specifics learned on the job." AF 117.

their resumes, explain why it rejected such applicants without an interview. AF 115-117, with which compare AF 102-105.

Rebuttal. In its rebuttal letter of November 28, 1994, the Employer contended that it had documented that the U. S. workers who applied were rejected solely for lawful job related reasons under 20 CFR § 656.21(b)(7), and that the position was open to all qualified U. S. workers under 20 CFR § 656.20(c)(8). The Employer argued that its stated requirements were the minimum requirements necessary to perform the duties of the position, as described in the application, posted notice, and newspaper advertisement. AF 122.⁹

The Employer argued that neither Mr. Yau nor Mr. Galperin was qualified for the position, contending that, where the stated job qualifications of an employer are not found to be unduly restrictive, an applicant who does not satisfy those requirements is not qualified.¹⁰ By citing **Chatwal Hotels and Restaurants, Inc.**, 88-INA-068(Feb. 20, 1990), however, the Employer appeared to concede that these U. S. applicants were able to perform the job duties, even though they lacked some minimum requirements that the Employer had stated in its application. AF 121.

Final Determination. By his Final Determination of December 13, 1994, the CO denied certification for the reasons set forth in the NOF. The CO particularly noted, however, that Employer was required to respond to the discrepancies noted and to provide the documentation specified in the NOF showing that the U. S. workers were not qualified, willing or available at the time they were referred and considered for the job at issue.¹¹ The CO also affirmed the denial in the NOF, explaining that the application and advertisement stated no experience requirements, and that its job requirements were limited to the academic degree of Master of Science, either in Mechanical Engineering or Civil Engineering, noting the special requirements of a concentration in Structural Engineering and knowledge of dynamics and vibration theory and the use of AutoCAD systems (versions 10 and 11).

⁹Examination of the amended and substituted version of the application and of the posted notice and advertisement confirms that this statement is correct.

¹⁰Employer cited **R. K. Plastics**, 89-INA-129(May 29, 1990) and **Univ. of Utah**, 878-INA-702(May 9, 1988). The Employer also cited **Ashbrook-Simon-Hartley v. McLaughlin**, 863 F2d 410 (5th Cir., 1989), to argue that in addition to the education, training and experience of the U. S. applicants, the CO must consider all relevant information in the application. AF 120.

¹¹As 20 CFR § 656.21(j) required that the Employer respond with documentation on issues relating to the availability of U. S. workers, counsel's assertions of facts concerning the post application recruitment results in counsel's letter of November 28, 1994, were rejected as evidence and given no weight as facts.

The CO rejected Employer's assertions that U. S. applicants, particularly Messrs. Yau and Galperin, lacked the specified minimum qualifications in the "functions of gears, pinions and reducer sets," "moveable bridges," "structural bridge design," and "bridge machinery," all of which were listed in Item 13 of the Employer's application, while expressly stating that no experience was required in the job offered at Item 14. The CO further observed that these specialized qualifications in bridge engineering were not listed as "Other Special Requirements" in Item 15, where the Employer had stated its requirements for knowledge of dynamics and vibration theory and use of AutoCAD systems 10 and 11. Based on the Employer's application, the CO observed that when the Alien was first hired by Employer he would not have qualified for this position, since the record contained no evidence that he could have met the specific requirements of the Employer at that time, based on the evidence of record.

Employer's appeal.¹² The Employer argued on appeal that its rejection of the U. S. workers was lawful, that the professional experience of the job applicants "was never an issue during the course of reviewing the applications," and that the professional experience of the job applicants "was considered an irrelevant matter." Instead, contended the Employer, "What was verified was their educational background as opposed to the educational requirements stated in the job advertisement and form ETA 750." (Emphasis as in quoted text.) Employer then called attention to job duties in Item 13, "Design & rating of movable bridges with mechanical systems." Employer said that following this sentence it had listed, "some of the academic pre-requisites needed to perform this duty." (Emphasis as in quoted text.)

¹²By way of appeal to BALCA the Employee sent his own letter, dated January 10, 1995, in which he offered evidence as to his qualifications for the position at issue, including his academic background, and presenting arguments as to the qualifications of the U. S. candidates discussed by the CO in the NOF and FD. Because the letter filed as an appellate brief by the Employer made specific cross references to this letter and to the attachments filed by the Alien, the following preliminary conclusions are noted. The evidence and documentation the Alien offered in response to the FD cannot be given weight as evidence in this appeal, which is limited to the record established by the parties advocating certification when this matter was pending before the CO. Since the Alien's qualifications were first mentioned by the CO in the FD, the Alien's response was invited under the Board's holding in **Prime Clinical Systems, Inc.**, 88-INA-530(Feb. 9, 1990). On the other hand, after examining the Alien's evidence with the NOF and the DF, it is clear that the Alien's own qualifications are peripheral to the CO's reasons for denying certification and weighing them had nothing to the CO's disposition of the issue of certification. For this reason, the reference of the CO to the qualifications of the Alien is given no weight; and it is found to be unrelated to the conclusions of the CO in the FD. As no issue concerning the qualifications of the Alien is part of this appeal, neither the evidence nor the arguments of the Alien merit consideration on the issues appealed. **Modular Container Systems, Inc.**, 89-INA-228(July 16, 1991)(en banc); **Yaron Development Co.**, 89-INA-178(Apr. 19, 1991)(en banc); and see **Huron Aviation**, 88-INA-431(July 27, 1989).

After arguing that the necessary professional qualifications were educational and were not based on experience, the Employer then denigrated its own statements as to the academic degrees for the job, asserting that, "It would be unrealistic to suggest that any applicant holding a Master's Degree qualifies for this position," continuing, "This premise completely disregards all the required academic knowledge stated in Item 13." The Employer emphasized nevertheless that the knowledge described in Item 13 is "primarily gained through completion of higher engineering studies in colleges and universities." In taking this position, the Employer now stated that it did not consider the preparation for the job stated in Item 13 to be an experience requirement, admitting the reasoning and assumptions on which Mr. Yau based his response to the post recruitment survey. The Employer said its advertised job was an entry level position, and that the only requirements it could have demanded were academic. For these reasons, the construction that the Employer offered in its appeal from the FD was the basis of its belief that the job description in the Form ETA 750 required an applicant to qualify for an interview by meeting the requirements in Items 13, 14, and 15.¹³

Discussion

The Employer has applied for certification of the Alien to fill the position of Mechanical Engineer, the duties of which the Employer then described as quoted supra. Employer's statement on appeal offers to restate the contents of its application by reading new meanings for the words it actually used. Employer's argument is that its description of the job duties and special requirements refers only to the academic preparation for the position the Alien was performing in the position for nearly two years before it filed this application. In rebuttal, therefore, the Employer said (1) its rejection of the U. S. applicants was solely for job-related reasons and (2) its application asserted no more than the minimum requirements necessary to perform the duties of the position.

By this novel argument the Employer has put a "spin" on its application, notice and advertisement to transmute its initial statement of the job duties into academic courses which the U. S. candidates for the position have been challenged to match. It is observed, however, that the Employer intends to pay an annual salary that yields a little over \$15 an hour for a professionally qualified worker who has completed eighteen years of scholastic, collegiate, and post graduate academic education to perform a job

¹³ On August 22, 1995, the Employer's attorney filed with BALCA a letter in which he restated the Appellants' position in conclusory form and contended that the sole issue on appeal is whether the Employer lawfully rejected the qualified job applicants. As this letter repeated the arguments stated in the Employer's own letter, as discussed above, counsel's communication will be considered as an extension of the Employer's letter of January 11, 1995.

that it described as "entry level." As a result Employer's new justification of its rejection of U. S. applicants for failure to meet Employer's "minimum requirements" requires reexamination of the application and the statement on appeal, itself.

First, the opinions and facts in the statement of Employer's "Senior Engineering Manager" are less than credible documentation of this self-serving argument by a principal in the proceeding, whose interest in the outcome is patently obvious. Second, the statement, which would have standing to be considered in the Employer's rebuttal, cannot be considered and given weight ab initio, since it was filed too late to be considered for any such purpose. **Wirtz Manufacturing Co.**, 88-INA-063(Jan. 13, 1989)(en banc).

Second, the Employer's argument that its description of the job duties and its other special requirements are necessarily academic criteria and not part of the job to be performed is rejected as inconsistent with its own application. AF 13, 32. (1) At part 13 of ETA 750, the form requires the Employer to "Describe Fully the Job to be Performed (Duties)." (Italics as in the original.) There is no reference in part 13 that could be construed as referring to the educational criteria that Employer now asserts. (2) Mention by the Employer of special abilities was limited to Part 15 of ETA 750, "Other Special Requirements." At this part of the application it listed, "Knowledge in dynamics and vibration theory and use of AUTOCAD Systems (version 10 & 11)." As the Employer argues that the contents of both part 13 and part 15 are directed at skills acquired in academic course work, notwithstanding the obvious differences in the instructions printed on each part of the application, this appears to be an attempt to obfuscate the instructions that were otherwise clearly set forth on the face of this form and is unpersuasive for this reason, as well.

Moreover, it is self-evident in AF 32 that the Employer did not indicate whether it expected the applicants to have acquired such knowledge by academic preparation, by experience on the job, or by some other means. The regulations do not afford applicants the option of relying on subjective expectations that would lend credence to Employer's present representation that it assumed that the applicants would know what it meant by stating its educational criteria among the job duties. The confusion left by the Employer's argument as to the meaning of parts 13 and 15 was not relieved by the enlarging of the education requirement in its expansion of the Major Field of Study entry in its educational requirements by adding to Mechanical Engineering the alternative of a major in "Civil Engineering (concentration in structural engineering)," as this said nothing about the components that the Employer incorporated in its description of the position that it offered.

Summary. Employer's application and the reasons it gave for rejecting U. S. applicants in the Recruitment Report, require reference to 20 CFR § 656.24(b)(2)(ii), which provides that a U. S. worker is considered able and qualified for the position, if by education, training, experience, or a combination of such factors a job candidate is able to perform in the normally acceptable manner the duties required by the offered occupation as it customarily is performed by the U. S. workers similarly employed. As Mr. Yau cogently remarked in his post recruitment response, engineering schools do not generally offer course concentrations in bridge design, as opposed to general structural engineering because such a narrow specialization would limit the career potential of the students. Viewing this tightly drawn application against the DOT description of the job duties of a Mechanical Engineer in the United States, it is observed that the Employer's rebuttal offered the CO no reason to believe that the qualifications of at least one or more of the U. S. applicants were insufficient for the performance of the duties of an entry level Mechanical Engineer.

The Employer's arguments suggest that it is unaware that the immigration certification the Act provides is intended to be a benefit by virtue of the privileged status the statutory certification confers on the Alien as an exception to the limitations adopted by Congress on admission of foreign workers into the United States for permanent residence and employment. The object of the immigration certification that is granted under the Act and regulations is to provide favored treatment to limited classes of foreign workers who the Congress expects to bring to the U. S. labor market needed skills that are not otherwise available. See 20 CFR §§ 656.1(a)(1) and (2), 656.3 ("Labor certification"). The scope and the character of this statutory privilege is clearly indicated by the quotation in 20 CFR § 656.2(b) of a portion of the text of § 291 of the Act (8 U. S. C. 1361), which describes the burden of proof that Congress placed on the applicants in certification proceedings:

Whenever any person makes application for a visa or any other documentation required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not subject to exclusion under any provision of this Act

Such proof of eligibility must be demonstrated by evidence of the Employer that it has made a bona fide effort to recruit U. S. workers who are able, willing, qualified and available to perform the job at issue. **Pesikoff v. Secretary of Labor**, 501 F2d 757, 761-762(D.C. Cir., 1974), Cert den. --- U. S. ---, 95 S.Ct 525(Nov. 25, 1974).

In this case the Employer concluded that all of the U. S. applicants presented insufficient qualifications for the job. Ignoring the explanations of the CO, the Employer's report of recruitment efforts, rebuttal, and statement on appeal placed on the U. S. workers who applied the burden of establishing the adequacy of their qualifications for the performance of the job offered, since the file suggests that some of the candidates are capable of performing the work of a Mechanical Engineer, as described in the DOT. See **Quality Metal Finishing Corp.**, 95-INA-501(Feb. 28, 1997). In spite of the Employer's arguments on appeal, the position of the CO has been consistent. As the CO explained to the Employer in the NOF and FD, under 20 CFR § 656.24(b)(2)(ii) the Employer's conclusion that the resumes of the U. S. workers were insufficient was inconsistent with the Act and regulations. By reason of the Employer's rejection of all of the U. S. workers it is found that the Employer failed to make a bona fide effort to recruit U. S. workers under the Act and regulations.

Conclusion. For the reasons discussed above we find that the CO was correct in finding that one or more of the applicants were qualified to execute the duties of this position in the normally acceptable manner this occupation customarily is performed by U. S. workers similarly employed. Consequently, it is concluded (1) that the U. S. workers applying for the job the Employer offered to the Alien were rejected for reasons that were not job-related and (2) that this job clearly was not open to qualified U. S. workers.

Accordingly, the following order will enter.

ORDER

The decision of the Certifying Officer denying certification under the Act and regulations is Affirmed.

For the Panel:

FREDERICK D. NEUSNER
Administrative Law Judge

I concur in the result.

JOHN C. HOLMES

Administrative Law Judge

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary of Labor unless within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, N.W., Suite 400
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five, double-spaced, typewritten pages. Responses, if any, shall be filed within 10 days of service of the petition and shall not exceed five, double-spaced, typewritten pages. Upon the granting of the petition the Board may order briefs.

BALCA VOTE SHEET

Case Name: **LICHTENSTEIN ENGINEERING ASSOCIATES, PC**, Employer,
FARZAD FOULADI, Alien

Docket No. : 95-INA-506

PLEASE INITIAL THE APPROPRIATE BOX.

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| | : | CONCUR | : | DISSENT |
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Thank you,

Judge Neusner

Date: March 5, 1997